IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

238-2 **FAO-3027-2007 (O&M)**
Date of Decision:29.04.2025

Karambir and another ......appellants

Vs.

Suresh and others ......respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. N.K. Malhotra, Advocate for the appellants.

Mr. Gaurav Khera, Advocate for respondents No.1 and 2.

Mr. Pradeep Goyal, Advocate for respondent No.3-Insurance Company.

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SUDEEPTI SHARMA J. (ORAL)

The present appeal has been filed by the appellants-Karambir (driver) and Ashok (owner) of the offending vehicle against the Award dated 03.05.2007 passed in the claim petition under Section 163-A of the Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal'), wherein the claimants were held entitled for compensation to the tune of Rs.1,94,500/- alongwith interest at the rate of 7.5% per annum on account of death of Tilak Raj, in a Motor Vehicular Accident, occurred on 28.06.2005 and liability was fastened upon the appellants to pay the compensation.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 28.06.2005, one Ajmer was travelling on his bicycle in the area of village Rohana, Police Station, Kharkhoda. His bicycle was knocked down by a TATA-407 vehicle bearing registration No.HR-46A-5614 (hereinafter called as

offending vehicle) driven by respondent No.1-Karmabir, appellant No.1. Ajmer suffered grievous injuries in the said accident. One Tilak Raj was travelling in the offending vehicle who also died in the said accident.Respondent No.2 (Ashok) is owner of the offending vehicle whereas respondent No. 3 is its insurer.

3. Upon notice of the claim petition, appellants appeared and contested the claim petition by filing written reply denying the factum of compensation/accident.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

> *1. Whether respondent no.1 was rash and negligent while driving vehicle No.HR-46A/5614 and was responsible for causing the accident in question as alleged in the petitions? OPP.*
> *2. If issue no.1 is proved, whether petitioner Ajmer and deceased Tilak Raj sustained injuries and Tilak Raj died because of his injuries as alleged in the petitions? OPP.*
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> *3. If, issues No.1 and 2 are proved, whether petitioner Ajmer is entitled for compensation on account of his injuries and L.Rs of deceased/petitioners of petition titled as Suresh Vs. Karambir are entitled for compensation on account of termination of life of Tilak Raj, if so, to what amount and from whom? OPP.*
>
> *4. Whether respondent No.1 had no valid and effective driving licence, as alleged by respondent No.3? OPR. 3.*
>
> *5. Whether respondent No. 2 had contravened the terms and conditions of the Insurance Policy ? OPR-3.*
>
> *6 Relief.*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. Further,

the learned Tribunal has held the appellants (owner and driver) to pay the compensation. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellants contend that the learned Tribunal has erred in granting compensation to the claimants. He further contends that Tilak Raj (deceased), was not travelling as a gratuitous passenger but was accompanying the goods in the goods carriage to ensure their safety and proper delivery. Accordingly, it is submitted that the insurer alone is liable to indemnify the claimants. Therefore, he prays that the present appeal be allowed and the award passed by the learned Tribunal be set aside.

7. *Per contra* learned counsel for respondent-Insurance Company contends that the liability to pay the compensation has rightly been decided by the learned Tribunal, therefore he prays for dismissal of the present appeal.

8. I have heard learned counsel for the parties and perused the whole record of the case.

9. The relevant portion of the award is reproduced as under:-

> *"11. Issues No.1 to 5 are being disposed off together as these involve common questions of law and fact.*
>
> *12. Suresh (PW1) was an eye witness to the accident. He deposed in detail as to how respondent No.1 caused the death of Tilak Raj by driving the offending vehicle rashly and negligently.*
>
> *13. Ajmer (PW3) was a victim of the accident. He also deposed in detail as to how respondent No.1 caused grievous injuries to him by driving the offending vehicle rashly and negligently.*

14. Dr. Roop Singh (PW4) proved that Ajmer suffered 10% permanent and 10% temporary disability in said accident.

15. Above said evidence clearly proves that respondent No.1 caused the death of Tilak Raj and caused grievous injuries/permanent disability to Ajmer by driving offending vehicle rashly and negligently.

16. Respondent No.3 did not adduce any evidence to prove that respondent No.1 had no valid effective Driving License.

17. Ld. counsel for petitioners Suresh etc. argued that even though Tilak Raj was travelling in Tata-407 Vehicle, he was not travelling as gratuitous passenger. Ld. counsel claimed that insurer was fully liable for death of Tilak Raj in view of law laid down in ***New India AssuranceCo.Ltd. Vs. Shanti Devi and others.*** *2006 ACJ 1501,* ***National Insurance Co.Ltd. Vs.Tula Ram and others****, 2004 ACJ 741,* ***Lachandhari Shah and another Vs. Raj Nath Shah and another,*** *2005 ACJ 695,* ***National Insurance Co.Ltd. Vs. Swaran Singh and others****, 2004 ACJ-1 and* ***Oriental Insurance Co. Ltd. Va.Ghulam Mohd.*** *2004 ACJ-1811.*

18. However, petitioners failed to adduce any evidence to justify as to why Tilak Raj was travelling in the offending vehicle which was basically ment for carrying goods. On the contrary evidence on record clearly brings out that Tilak Raj was travelling as a gratuitous passenger in the offending vehicle. In view of law laid down by Hon'ble Supreme Court of India in ***United India Insurance Co. Ltd. Shimla Vs. Tilak Raj Singh and others*** *(2006-2) PLR 297, insurer is not liable for death of a gratuitous passenger.*

10. Upon a careful perusal of the record, this Court finds that the conclusion reached by the learned Tribunal is not supported by the evidence on file. Specifically, the testimony of PW-1, Suresh (father of the deceased), in his cross-examination unequivocally states:

> *"It is correct that furniture and other articles of dowry were loaded in the vehicle. My son and I were travelling in the said vehicle to take care of the articles loaded therein, at the instance of the father of the bridegroom."*

11. The uncontroverted testimony of PW-1-Suresh clearly establishes that deceased-Tilak Raj, was not a mere unauthorized or gratuitous passenger but was travelling in the goods vehicle for safety of the goods, with the authorization of the owner of the goods-i.e., the father of the bridegroom. This fact remains unrebutted and unchallenged on the record. The Insurance Company has not led any evidence to discredit this testimony. Further the Insurance Company has failed to prove that deceased-Tilak Raj was a gratuitous passenger.

12. It is trite law that that the Insurance Company is liable to indemnify the insured and compensate for injuries or death suffered by the owner of the goods or his duly authorized representative when such a person travels along with the goods in a goods carriage. In this regard, reference may be made to the judgment of the Hon'ble the Supreme Court in ***New India Assurance Co. Ltd. v. Asha Rani, AIR 2003 SC 607***, wherein it has been held as under:-

> *" In Satpal's case (supra) the Court assumed that the provisions of Section 95(1) of Motor Vehicles Act 1939 are identical with Section 147(1) of the Motor VehiclesAct 1988, as it*

stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods of his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicle Amended Act of 1994 is examined, particularly Section 46 of the Act 6 of 1991 by which expression 'injury to any person' in the original Act stood substituted by the expression 'injury to any person including owner of the goods or his authorised representative carried in the vehicle the conclusion is irresistible that prior to the aforesaid amendment Act of 1994, even if widest interpretation is given to the expression 'to any person' it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of Clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the Insurance Policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle which was added to the pre-existed expression 'injury to any person' is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to

> *bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal's case, therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury."*

13. Further, in ***National Insurance Co. Ltd. v. Baljit Kaur & Ors., (2004) 2 SCC 1***, Hon'ble the Supreme Court, while reaffirming the ratio in ***Asha Rani***, clarified the scope of liability of insurer under such circumstances and held as under :

> *" It is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authoirsed representative remains the same. Although the owner of the goods or his authoirsed representative would now be covered by the policy of insurance in respect of a good vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people."*

14. The above legal position has also been followed by Division bench of this court in ***National Insurance Co. Ltd. v. Ram Chander & Anr.***, ***2007 (2) RCR (Civil) 51,*** wherein the Hon'ble Court held as under :

> *" We have heard the learned counsel for the parties at length. The only question that has to be determined is whether the claimants were the gratuitous passengers so as to exclude the insured from the purview of the policy as it amounted to a breach of a condition thereof. To establish the factum of the status of the claimants in the light of the provisions of the amended provisions of Section 147(1), we have also perused the evidence with specific reference to the cross-examination of the witnesses who had testified before the Tribunal. The claimants, whose cases were the subject matter of the aforementioned appeals, were the persons who were accompanying their goods to be carried to the fair. PW2, PW5, PW6, PW7, PW11 and PW12 had testified that bags of fodder, shoes, wooden planks and cattle feed were the goods which were being ferried in the offending vehicle to the accompaniment of the claimants. They could, therefore, not be gratuitous passengers so as to absolve the insurance company of its liability to pay the amount of compensation as determined by the Tribunal since they were all owners of the goods travelling in the vehicle at the time of accident."*

15. In view of the foregoing legal position and the unrebutted evidence on record, the appeal is **allowed** and finding of the Learned Tribunal with respect to the status of the deceased as a gratuitous passenger is set aside.

16. Consequently, the award dated 03.05.2007 is modified to the extent that respondent No.3-Insurance Company is solely liable to pay the amount of compensation to the claimants.

17. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Pradeep Goyal, Advocate within a period of 20 days from the date of receipt of the copy of this order, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, by this Court.

18. The statutory amount of Rs.25,000/- despoisted by the appellants at the time of admission of the appeal, is ordered to be refunded to them.

19. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

29.04.2025
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No